

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
WASHINGTON, D.C.**

NUVERRA ENVIRONMENTAL SOLUTIONS, INC.,

and

Case 8-RC-164447

TEAMSTERS LOCAL UNION #348

**EMPLOYER'S REQUEST FOR REVIEW  
OF REGIONAL DIRECTOR'S DECISION AND ORDER  
OVERRULING OBJECTION AND CERTIFICATION OF REPRESENTATIVE**

April 20, 2016

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NUVERRA ENVIRONMENTAL SOLUTIONS, INC.,

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TEAMSTERS LOCAL UNION #348

**EMPLOYER'S REQUEST FOR REVIEW  
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OVERRULING OBJECTION AND CERTIFICATION OF REPRESENTATIVE**

Pursuant to Section 102.69(d)(3) of the Rules and Regulations of the National Labor Relations Board ("NLRB" or "Board"), Employer Nuverra Environmental Solutions, Inc. ("Nuverra") submits this Request for Review of the Regional Director's March 22, 2016 Decision and Order Overruling Objection and Certification of Representative ("Decision") in the above-captioned matter. In accordance with Section 102.67(d) of the Board's Rules and Regulations, compelling reasons exist for granting Nuverra's Request for Review. Specifically, the Decision raises substantial questions of law and policy because of its departure from officially reported Board precedent. Further, the Regional Director's conclusions on substantial factual issues are clearly erroneous on the record, and such errors prejudicially affect Nuverra's rights.

**I. PROCEDURAL HISTORY**

Pursuant to a petition filed on November 18, 2015<sup>1</sup> and a Stipulated Election Agreement approved on November 30, employees voted on December 18 at Nuverra's Diamond, Ohio facility to determine whether a majority of those full-time and regular part-time drivers employed by Nuverra at that facility desired representation by Teamsters Local Union No. 348 ("Petitioner"). *See*

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<sup>1</sup> All dates hereinafter are 2015, unless otherwise noted.

Order Directing Hearing on Objections and Notice of Hearing, attached as **Exhibit 1** hereto. All 25 employees eligible to vote in the December 18 election cast valid, unchallenged ballots. *Id.* Thirteen employees voted in favor of representation by Petitioner; 12 employees voted against representation. *Id.*

On December 28, Nuverra timely filed Objections to the election. *See* Nuverra's Objections to Election, attached as **Exhibit 2** hereto. On December 29, Region 8 Regional Director Allen Binstock directed a hearing on Nuverra's Objections. *See* Exhibit 1. On January 12, 2016, Nuverra submitted a "Notice of Partial Withdrawal of Objections to Election," withdrawing two of its three objections. *See* **Exhibit 3** hereto. On January 13, 2016, Hearing Officer Kyle Vuchak presided over a hearing on Nuverra's remaining objection. At that hearing, Nuverra presented documentary and testimonial evidence in support of its Objection No. 3, asserting that:

Between November 18, 2015 and December 18, 2015, [Petitioner] interfered with employee free choice and destroyed the laboratory conditions necessary for a fair election by offering and conferring benefits on employees in order to induce employees to support [Petitioner] and/or to vote in favor of [Petitioner] in the December 18, 2015 election.

*See* Exhibit 2.

On February 1, 2016, the Hearing Officer issued his "Report on Objections," in which he recommended that Nuverra's Objection No. 3 be sustained and that the December 18 election be set aside. *See* **Exhibit 4** hereto.

Petitioner filed exceptions to the Hearing Officer's Report on Objections, to which Nuverra submitted an Answering Brief. On March 22, 2016, Regional Director Binstock issued a "Decision and Order Overruling Objection and Certification of Representative." *See* **Exhibit 5** hereto. Despite affirming all of the Hearing Officer's rulings, factual findings, and credibility resolutions (*see* Exhibit 5, at 1), the Regional Director nonetheless found merit in Petitioner's exceptions to the Hearing Officer's Report on Objections and overruled Nuverra's objection. *Id.* Based on that

ruling, the Regional Director certified that a majority of valid ballots cast in the December 18 election had been cast for Petitioner and that Petitioner is the exclusive representative for collective bargaining purposes of all full-time and regular part-time drivers employed by Nuverra at its Diamond, Ohio facility. *Id.*

For the reasons discussed below, Nuverra requests review of the Regional Director's Decision because it is incorrect as a matter of established Board law. More specifically, the Regional Director failed to properly apply on-point Board precedent and failed to properly consider and give appropriate weight to undisputed record evidence, and consequently erroneously concluded that Petitioner "rebutted the inference that the holiday ham giveaway was objectionable." Exhibit 5, at 4.

## II. FACTS

As noted in the Decision (Exhibit 5, at 2), the facts relevant to this matter are not disputed. Petitioner filed its petition in this case on November 18. *See* Exhibit 4, at 1. On December 11 or 12, Petitioner provided free hams to seven Nuverra employees eligible to vote in the then-upcoming December 18 election. *Id.*, at 2-3; *see also* Transcript of Proceedings, January 13, 2016, Case 08-RC-164447, attached as **Exhibit 6**, at 9; 13; 31-32. Petitioner has provided free hams to its members on a yearly basis during the holiday season as a benefit of membership, and it publicizes this benefit via a newsletter that it mails to all of its members. Exhibit 4, at 2-3; Exhibit 5, at 2-4. Although this newsletter is intended for and directed only to Petitioner's members, Petitioner also sent this newsletter to the Nuverra employees eligible to vote in the December 18 election after it received the *Excelsior* list containing the names and addresses of those employees in early December. *Id.*; *see also* Exhibit 6, at 23-24.

Although Petitioner's newsletter plainly stated, in bold, underlined text, that there were "**no exceptions**" to Petitioner's restriction on its gift of a free ham to only Petitioner's members, and even though the Nuverra employees eligible to vote in the December 18 election were not members

of Petitioner, Petitioner made an exception for the Nuverra employees. *See* **Exhibit 7**, which is the newsletter at issue (admitted at the hearing as Employer's Exhibit 1); Exhibit 6, at 23-24; 27-28. It is undisputed that the only reason Petitioner made this exception to its members-only policy was because of then-upcoming election. Exhibit 4, at 2; Exhibit 6, at 28-29.

After publicizing its members-only benefit to the eligible Nuverra voters, Petitioner gave free hams to seven of the 25 Nuverra employees eligible to vote in the December 18 election. Exhibit 4, at 3. That election was decided by a single vote in favor of Petitioner. Exhibit 4, at 2-3; Exhibit 5, at 1; 3.

### **III. THE REGIONAL DIRECTOR'S DECISION FAILED TO FOLLOW CONTROLLING BOARD PRECEDENT AND MISAPPLIED UNDISPUTED FACTS.**

Well-established Board precedent stands for the logical proposition that, during the critical period between petition filing and an election, both employers and unions are prohibited from interfering with employee free choice by granting benefits to eligible voters. Although this rule has exceptions, it fundamentally exists to ensure a level playing field by prohibiting a party in an election matter from granting a benefit to voters *because of* the upcoming election, in order to gain an inappropriate advantage in that election.

The undisputed record evidence shows that less than a week before the December 18 election, Petitioner gave nearly one-third of the Nuverra employees eligible to vote a benefit it publicizes as available only to its members. The record also is undisputed that the only reason that Petitioner gave this benefit to the non-member Nuverra employees eligible to vote in the election was because these employees were in the proposed bargaining unit Petitioner is seeking to represent. Indeed, the record could not be clearer that, but for the upcoming election, the Nuverra employees would neither have been offered, nor would they have received, a gift from Petitioner, as both the documentary and testimonial evidence in this case plainly show that only members of Petitioner

were entitled to receive a free ham: to quote from Petitioner's newsletter, "**No Exceptions.**" Exhibit 7 (emphasis in original).

Petitioner nonetheless made an exception here, and less than a week before the December 18 election in which it received only one more vote for representation than against, it gave seven out of 25 eligible voters a free ham. Applying the test from *Be&D Plastics, Inc.*, 302 NLRB 245 (1991), the Regional Director concluded – contrary to the Hearing Officer's Report on Objections – that Petitioner rebutted the inference that its pre-election grant of benefits interfered with employee free choice. However, that conclusion ignores on-point Board precedent that, under factually analogous circumstances, such conduct is objectionable:

The Board has long held that a Union's actual grant of benefits to potential members during the critical period is "akin to an employer's grant of a wage increase in anticipation of a representation election [which] subjects the donees to a constraint to vote for the donor union"...

Although a Union may *promise* an existing benefit to new members if its receipt is not conditioned on the recipient's demonstration of preelection support, [citation omitted], it is, like an employer, barred in the critical period from conferring on potential voters a financial benefit to which they would not otherwise be entitled.

*Mailing Servs., Inc.*, 293 NLRB 565 (1989) (emphasis in original).

Petitioner's conduct here fits squarely within the rule set forth in *Mailing Services*. Rather than promise Nuverra employees that, if they voted Petitioner as their representative, they would be eligible to receive a free ham at the holidays next year, Petitioner instead "conferr[ed] on potential voters a financial benefit to which they would not otherwise be entitled" only days before the election.

However, the Regional Director concluded that under *Be&D Plastics, supra*, "unit employees would not have reasonably concluded that the purpose of the gift of a holiday ham was to influence their vote in the election." Exhibit 5, at 4. In *Be&D Plastics*, the Board explained:

In determining whether a grant of benefits is objectionable, the Board has drawn the inference that benefits granted during the critical period are coercive. It has, however, permitted the employer to rebut the inference by coming forward with an explanation, other than the pending election, for the timing of the grant or announcement of such benefits.

302 NLRB at 245 (citations omitted). Whether a party can rebut the inference of coercion turns on several factors, specifically: “(1) the size of the benefit conferred in relation to the stated purpose for granting it; (2) the number of employees receiving it; (3) how employees reasonably would view the purpose of the benefit; and (4) the timing of the benefit.” *Id.* In reaching his Decision to overrule Nuverra’s objection and certify Petitioner, the Regional Director erred in his conclusions with respect to the third and fourth factors under the *Be&D Plastics* test.<sup>2</sup>

**A. The Regional Director Erred In Concluding That Petitioner’s Timing Of Its Offer And Grant Of A Benefit to Eligible Voters Was Not Coercive.**

The Regional Director found that the timing of Petitioner’s offer and conferral of its gift of a free ham to Nuverra employees “had nothing whatsoever to do with the pending the election...” *Id.*, at 3. Instead, the Regional Director concluded that “the timing of the ham announcement was consistent with what the Petitioner had done in the past, and that its connection with the pending election was completely coincidental.” Exhibit 5, at 3. This superficial conclusion, however, is clearly erroneous based on the record.

It may be that the Regional Director was correct that the timing of Petitioner’s announcement of its members-only holiday ham giveaway in late 2015 was consistent with the timing of the announcement of that annual event issued to its members in prior years. However, whether Petitioner’s timing of the ham giveaway announcement was consistent with prior years is not the proper timing-related inquiry under the circumstances of this case. Rather, under *Be&D*

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<sup>2</sup> Nuverra does not challenge the Regional Director’s conclusions regarding first and second *Be&D Plastics* factors, including his conclusion that the number of Nuverra employees who received a gift from Petitioner weighs against Petitioner’s effort to rebut the presumption of coercion associated with the grant of that gift during the critical period. *See* Exhibit 5, at 3.

*Plastics*, the proper question is whether the timing of Petitioner's announcement to the Nuverra employees that it would extend its offer of the ham giveaway to the non-member Nuverra employees was intended to influence the election. On this issue, there can be no serious debate.

The record reflects the following undisputed facts:

- In late 2015, Petitioner sent a newsletter containing its offer of a free holiday ham to its members, as it has done in previous years.
- Petitioner also sent this newsletter to the Nuverra employees whose addresses it obtained via the *Excelsior* list it received in connection with the election proceeding in that case.
- Upon receipt of the newsletter, a Nuverra employee called Petitioner to inquire if Nuverra employees were eligible to receive a free ham from Petitioner, even though they were not members of Petitioner, and thus, according to the explicit, unambiguous terms of the newsletter, they were not eligible to receive a ham.
- In response, Petitioner advised that Nuverra employee that Nuverra employees could indeed receive a free ham from Petitioner.

*See* Exhibit 4, at 2; Exhibit 6, at 23-25.<sup>3</sup>

As it relates to timing, these facts support only two conclusions. The first, and the only one addressed by the Regional Director, is that the timing of holiday ham giveaway announcement in 2015 was consistent with the timing of that announcement in prior years, that is, it was sent around the holiday season. The second conclusion, which the Regional Director failed to consider but which is far more relevant to this issue, is that, but for the fact that Petitioner filed the petition in

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<sup>3</sup> In proceedings below, Petitioner asserted, without offering any proof thereof, that it previously made similar exceptions to its rule that only members may receive free holiday hams and provided holiday hams to non-member employees it was seeking to organize without any challenge or incident. Petitioner's self-confessed improper grant of benefits to non-member employees during prior organizing campaigns without consequence only suggests that those employers whose employees were the recipients of Petitioner's improper benefits either failed to raise the issue due to a lack of knowledge or understanding of the law in this area, or, for other reasons not part of the record in this case, chose not to object to Petitioner's conduct (for example, if notwithstanding its objectionable conduct, those employers won those elections). What it does not mean is that Petitioner's grant of a member-only benefit to non-member eligible voters during the critical period in this case is unobjectionable simply because it did the same thing on prior occasions, but apparently got away with it.



this case and thereby received an *Excelsior* list, enabling it to mail the offer of free hams to the eligible Nuverra voters, those Nuverra employees would never have known about the Union's ham giveaway. Any suggestion that the offer of free hams by Petitioner to the Nuverra employees was mere happenstance – a function of a page of the calendar, rather than a conveniently timed vehicle to intentionally offer to non-member eligible voters a members-only gift in advance of the election – simply ignores reality. Accordingly, the Regional Director erred in concluding that timing here supports Petitioner. To the contrary, because the evidence shows Petitioner's timing of the benefit was inextricably and unquestionably linked to the election, this factor weighs decidedly against rebutting the inference that Petitioner's gift to the Nuverra employees was coercive.

**B. Reasonable Employees Would View Petitioner's Gift As Directly Connected To The Upcoming Election, Not Holiday Goodwill.**

The Regional Director concluded that the evidence in this matter showed that “the holiday hams were provided on account of the upcoming holidays and not because of the pending election.” Exhibit 5, at 4. This conclusion is contrary to established NLRB precedent, defies common sense, and ignores the undisputed evidence that Petitioner's newsletter informed the Nuverra employees that hams were only to be provided to its members – as stated on the flier, no exceptions – not as a gift, but as a benefit of membership. Thus, a reasonable Nuverra employee could only have concluded that, if Petitioner was willing to extend its offer of a free ham to non-member Nuverra employees, it was because of the upcoming election. Indeed, Petitioner admits that the only reason that it sent the newsletter to the Nuverra employees in the first instance was because it received their addresses on the *Excelsior* list it received in connection with the election proceeding. Exhibit 6, at 27-29. On these facts, the Regional Director misapplied the controlling law in concluding that a reasonable Nuverra employee would not have directly associated Petitioner's gift of a free ham with the choice they were to make just a few days later concerning whether they wish to be represented by Petitioner.

In *Be&D Plastics*, the employer provided a paid day off to employees two days before an election so that the employees could attend a cookout where the employer delivered its final campaign message. 302 NLRB at 245. The Board found that the employees thereby received a benefit “for no other reason than the upcoming election,” and that the grant of the day off was “intended to influence their votes in favor of the Employer’s position.” *Id.*

Likewise, in *General Cable Corp.*, 170 NLRB 1682 (1968), the Board held that a union’s offer to provide \$5 gift certificates to eligible voters during the critical period was not a legitimate attempt to encourage attendance at a union meeting, but instead “were made as an inducement to support the Petitioner,” which interfered with employee free choice. 170 NLRB at 1683. The Regional Director’s Decision attempts to distinguish *General Cable Corp.* from the present case, noting that in *General Cable Corp.*, “a union chose to go to the employer’s facility to present gifts to employees who had not attended a meeting at the union hall where the gifts had been distributed,” calling this a “critical fact” standing in contrast to Petitioner here “not pursu[ing] the employees or any other unit employees to offer them a ham.” Exhibit 5, at 4. However, this supposed “critical fact” is a distinction without a difference. The “critical fact” in both *General Cable Corp.* and here is the fact that in each case, the union improperly interfered with employee free choice by offering and conveying a benefit to eligible voters during the critical period. That Petitioner here did not seek to compound its objectionable conduct by reaching out to the 18 Nuverra employees who did not come to its hall to receive free hams does not remove or reduce the taint caused by providing a free ham to the seven Nuverra employees who did.

Similarly, in *Mailing Servs.*, the union in that case “made no contention that the employees who received the [union’s gift] were entitled to receive them independent of the election.” 293 NLRB at 565. Likewise here. Petitioner gave free hams to Nuverra employees not because it had a consistent past practice of giving holiday hams to non-members or because that gift was available to

anyone, but instead, it offered the hams to the Nuverra employees for no reason other than the pending election. Indeed, the only reasonable conclusion a Nuverra employee could reach after finding out that Petitioner was willing to give each of them a free ham was that Petitioner was willing to deviate from its “members-only, no exceptions” policy for the Nuverra employees because of the upcoming election.<sup>4</sup>

The Regional Director concluded that Petitioner’s gift to nearly one-third of the eligible Nuverra voters “could not have been viewed by any reasonable employee as an attempt to influence his or her vote.” Exhibit 5, at 4-5. On this record, how the Regional Director could make this pronouncement is not only unclear, but unsupportable. From the standpoint of a Nuverra voter, who is informed that even though Petitioner only offers free holiday hams to its members – “no exceptions” – he can receive a ham, what other possible reason could reasonably exist for Petitioner to extend the offer of this gift to him? But for Petitioner’s organizing campaign, he would not have received Petitioner’s newsletter. That newsletter plainly stated that only Petitioner’s members or their spouses could pick up a free ham, prompting one Nuverra employee to call Petitioner to learn that it would provide that members-only benefit to Nuverra employees because they were seeking Petitioner’s representation. Under these circumstances, the Regional Director’s conclusion that the Petitioner’s offer and grant of a free ham to Nuverra employees was not intended to garner support for Petitioner in the upcoming election is pure fantasy.

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<sup>4</sup> Like his attempt to distinguish *General Cable Corp.*, the Regional Director’s attempt to distinguish *Mailing Servs.* (see Exhibit 5, at 4) is unavailing. That Petitioner “did not create a special event targeted at the potential voters” is irrelevant, and that the “the holiday ham giveaway was an established annual tradition” misconstrues Petitioner’s “established annual tradition.” It makes no difference whether an improper benefit is given as part of any special event or with any particular fanfare. The issue is simply whether, as is the case here, a benefit was improperly offered and conveyed during the critical period. Moreover, to the extent the record in this case establishes any “annual tradition,” that tradition is only one in which Petitioner gives its members a free ham each holiday season; there is no “established annual tradition” of giving free hams to non-members eligible voters.

So too is the Regional Director's unsupported conjecture that, "if the Petitioner was intent on swaying voters in anticipation of the election, it certainly would have used a more direct manner of notifying the voters about the hams." Exhibit 5, at 4. Indeed, this off-the-cuff, factually baseless guess ignores the record evidence reflecting how the events actually unfolded in this case. The record reflects that a Nuverra employee contacted Petitioner about receiving a free ham. The record also reflects that seven Nuverra employees received free hams from Petitioner. The only reasonable conclusion that can be made on these facts is that the employee who was informed by Petitioner that all Nuverra employees eligible to vote in the election could receive a free ham (*see* Exhibit 6, at 25) told a coworker or coworkers, who then further spread the message to other Nuverra employees. How else would six additional employees have known about Petitioner's offer, such that they also received free hams? This being the case, there was no need for Petitioner to engage in the "more direct manner of notifying the voters about the hams" the Regional Director speculates it would have done if its intention was to sway voters. Petitioner directly informed one voter that he and his Nuverra coworkers could receive free hams, and based on the events that followed, it is obvious that this message spread through that group, enough so that at least nearly one-third of the eligible voters availed themselves of Petitioner's offer before the election. No more "direct manner" of persuasion was needed, as Petitioner's message had the desired effect of being substantially disseminated within the ranks of the eligible Nuverra voters.

#### **IV. CONCLUSION**

No matter how well-intentioned Petitioner's grant of a benefit to the Nuverra employees may have been, holiday cheer does not preempt the National Labor Relations Act, which demands strict "laboratory conditions" in the conduct of free and fair elections. The straightforward and undisputed facts establish that, during the critical period prior to the December 18 election, Petitioner offered to all Nuverra employees eligible to vote in that election a gift that it expressly and

explicitly reserves to its members as a benefit of membership. Nearly one-third of the Nuverra employees who cast ballots in the election accepted the Union's offer and received a free ham. Established Board precedent leaves little room for doubt that under these circumstances, it is to be presumed that this gift interfered with the laboratory conditions necessary for a proper election, particularly where the vote was as close as it was here, where the difference of a single vote would have changed the outcome of the election. The Regional Director failed to properly follow and apply that precedent, as well as erroneously construed and misapplied the undisputed facts in this proceeding in reaching his Decision. Accordingly, his conclusion that Petitioner's exceptions to the Hearing Officer's Report on Objections were meritorious was error. For the reasons set forth above, the Hearing Officer correctly determined under the facts and controlling Board authority that Petitioner's conduct improperly interfered with the free and fair expression of employee choice. Nuverra therefore respectfully requests that the Board grant its request for review, and that it reverse the Regional Director's Decision, set aside the December 18 election, and direct a second election among those employees in the stipulated appropriate bargaining unit who are eligible to vote in a second election.

RESPECTFULLY SUBMITTED this 20th day of April, 2016.

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**CERTIFICATE OF SERVICE**

The undersigned, an attorney, hereby certifies that he filed the following **EMPLOYER NUVERRA ENVIRONMENTAL SOLUTIONS, INC.'S REQUEST FOR REVIEW OF REGIONAL DIRECTOR'S ORDER OVERRULING OBJECTION AND CERTIFICATION OF REPRESENTATIVE** via the NLRB's E-Filing System and served copies on the following persons via electronic mail to the email addresses indicated below and via U.S. mail to the mailing addresses indicated below, each on April 20, 2016, pursuant to Sections 102.69 and 102.114 of the Board's Rules and Regulations:

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/s/ Daniel B. Pasternak

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Case 8-RC-164447

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**INDEX OF EXHIBITS**

<u>Exhibit Number</u>	<u>Description</u>
1	Order Directing Hearing on Objections and Notice of Hearing; December 29, 2015
2	Employer Nuverra Environmental Solutions, Inc.'s Objections to Election; December 28, 2015
3	Employer Nuverra Environmental Solutions, Inc.'s Notice of Partial Withdrawal of Objections to Election; January 12, 2016
4	Hearing Officer's Report on Objections; February 1, 2016
5	Decision and Order Overruling Objection and Certification of Representative; March 22, 2016
6	Transcript of Proceedings of Hearing on Objections (excerpts); January 13, 2016
7	Employer Exhibit 1; Hearing on Objections; January 13, 2016

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# **EXHIBIT 1**



UNITED STATES OF AMERICA  
THE NATIONAL LABOR RELATIONS BOARD  
REGION 8

NUVERRA ENVIRONMENTAL SOLUTIONS, INC

Employer

and

08-RC-164447

TEAMSTERS LOCAL UNION #348

Union

**ORDER DIRECTING HEARING ON OBJECTIONS AND NOTICE OF HEARING**

Pursuant to a Stipulated Election Agreement approved by me on November 30, 2015, an election was conducted on December 18, 2015, among the employees in the following described unit:

***All Full-Time and regular Part-Time Drivers at the Employer's Diamond, OH location, but excluding all other employees, including supervisory, managerial, clerical, sales, professionals, and guards as defined by the Act.***

The revised tally of ballots issued after the election shows that of approximately 25 eligible voters, 25 cast ballots, of which 13 were cast for and 12 cast against the Union.

On December 28, 2015, the Employer filed timely objections (attached) to conduct affecting the results of the election.

Pursuant to the provisions of Section 102.69 of the Board's Rules and Regulations, an administrative investigation of the objections has been conducted. Concerning those objections, I make the following findings and conclusions.<sup>1</sup>

**OBJECTION NO. 1:**

In this objection, the Employer asserts that an agent of the Union interfered with employee free choice by threatening eligible voters with unspecified reprisals.

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<sup>1</sup> The petition was filed on November 18, 2015. I have considered only conduct which occurred during the critical period, which begins on and includes the date of the filing of the petition and extends through the election. The **Ideal Electric and Manufacturing Company**, 134 NLRB 1275 (1961)

The Offer of Proof submitted by the Employer in support of this objection indicates that various employees will testify that an alleged employee-agent of the Union threatened them during the critical period with unspecified reprisals if those employees did not vote in favor of the Union.

I have concluded that this objection raises substantial and material issues of fact and credibility which I cannot resolve on the basis of an administrative investigation. Therefore, I shall set Objection No. 1 for hearing.

### **OBJECTION NO. 2**

In this objection, the Employer asserts that a named employee created an atmosphere of fear and reprisal by threatening employees if they did not vote for the Union, rendering a free election impossible.

The Offer of Proof submitted by the Employer in support of this objection indicates that several employees will testify concerning alleged threats and intimidating statements made to them by an employee during the critical period, allegedly sufficient to establish that an atmosphere of fear and reprisal was created even if the evidence fails to establish that the employee was an agent of the Union.

I have concluded that this objection raises substantial and material issues of fact and credibility which I cannot resolve on the basis of an administrative investigation. Therefore, I shall set Objection No. 2 for hearing.

### **OBJECTION NO. 3**

In this objection, the Employer alleges that the Union interfered with the conduct of a free and fair election by offering and conferring benefits to employees in order to induce them to vote for the Union.

The Offer of Proof submitted by the Employer in support of this objection indicates that the Employer will offer testimony from eligible voters to establish that the Union offered and distributed free holiday hams to all eligible voters during the critical period before the election.

I have concluded that this objection raises substantial and material issues of fact and credibility which I cannot resolve on the basis of an administrative investigation. Therefore, I shall set Objection No. 3 for hearing.

### **ORDER**

**IT IS HEREBY ORDERED** that the issues raised by the Employer Objections 1, 2 and 3 be resolved at a hearing before a duly designated hearing officer.

**YOU ARE HEREBY NOTIFIED** that on **January 8, 2016**, and on consecutive days thereafter until completed, at 10:00 a.m. in a Hearing Room of the National Labor Relations Board, 1695 AJC Building, 1240 East Ninth Street, Cleveland, Ohio, a hearing will be conducted before a hearing officer of the National Labor Relations Board to resolve the issues raised by the Employer Objections, at which time and place the parties will have the right to appear in person or otherwise give testimony and call, examine, and cross-examine witnesses and present oral argument pertinent to the issues raised by the Objections.

**IT IS FURTHER ORDERED** that the hearing officer designated for the purpose of conducting the hearing shall prepare and cause to be served upon the parties a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations to the Regional Director for Region 8, NLRB as to the disposition of the issues raised by the Employer Objections. Within fourteen (14) days from the date of the issuance of said report any party may file with the Board an original and eight (8) copies of exceptions to such report. Immediately upon the filing of such exceptions, the parties filing the same shall serve a copy thereof upon the other party to this proceeding and shall file a statement of service with the Regional Director. If no exceptions are filed to such report, the Regional Director may, upon expiration of the period for filing exceptions, decide the matter forthwith upon the record or make other disposition of the case. See Rules and Regulations, Section 102.69 (c) (1) (iii) and 102.69. (c) (2)

Dated at Cleveland, Ohio this 29<sup>th</sup> day of December, 2015.



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Allen Binstock  
Regional Director  
National Labor Relations Board  
Region 8

**UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD**

**N O T I C E**

**Case No. 08-RC-164447**

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing.

However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds thereafter must be set forth in ***detail***;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; ***and***
- (5) Copies must be simultaneously served on all other parties (*listed below*), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

Daniel B. Pasternak, Esq. Squire Patton Boggs (US) LLP 1 E Washington Street, STE 2700 Phoenix, AZ 85004-2256	Ron Simpson, Sr. NUVERRA ENVIRONMENTAL SOLUTIONS, INC. 4317 State Route 225 Diamond, OH 44112-8749
John Doll, Esq. Doll, Jansen & Ford 111 West First Street, STE 1100 Dayton, OH 45402	Wayne Trivelli, Business Representative Teamsters Local Union #348 272 West Market Street Akron, OH 44303-2100
D. Lewis Clark, Jr., Esq. Squire Patton Boggs (US) LLP 1 E Washington Street, STE 2700 Phoenix, AZ 85004-2256	

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
WASHINGTON, D.C.**

NUVERRA ENVIRONMENTAL SOLUTIONS, INC.,

and

Case 8-RC-164447

TEAMSTERS LOCAL UNION #348

**EMPLOYER'S REQUEST FOR REVIEW  
OF REGIONAL DIRECTOR'S DECISION AND ORDER  
OVERRULING OBJECTION AND CERTIFICATION OF REPRESENTATIVE**

# **EXHIBIT 2**

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 8**

NUVERRA ENVIRONMENTAL SOLUTIONS, INC.

and

Case 8-RC-164447

TEAMSTERS LOCAL UNION #348

**EMPLOYER NUVERRA ENVIRONMENTAL SOLUTIONS, INC.'S  
OBJECTIONS TO ELECTION**

Pursuant to Section 102.69(a) of the Rules and Regulations of the National Labor Relations Board, Series 8, as amended, Employer Nuverra Environmental Solutions, Inc. submits its objections to the election conducted on December 18, 2015 at Nuverra's Diamond, Ohio facility.

**OBJECTION NO. 1**

Between November 18, 2015 and December 18, 2015, Teamsters Local Union #348 ("Union"), by its agent, Denzil Deuley, interfered with employee free choice and destroyed the laboratory conditions necessary for a fair election by threatening eligible voters with unspecified reprisals if employees did not vote in favor of Union representation in the December 18, 2015 election, and by intimidating and harassing employees in an effort to persuade eligible voters to vote in favor of Union representation in the December 18, 2015 election.

### **OBJECTION NO. 2**

Between November 18, 2015 and December 18, 2015, Denzil Deuley interfered with employee free choice and destroyed the laboratory conditions necessary for a fair election by threatening eligible voters with unspecified reprisals if employees did not vote in favor of Union representation in the December 18, 2015 election, and by intimidating and harassing employees in an effort to persuade eligible voters to vote in favor of Union representation in the December 18, 2015 election, thereby creating a general atmosphere of fear and reprisal rendering a free election impossible.

### **OBJECTION NO. 3**

Between November 18, 2015 and December 18, 2015, the Union interfered with employee free choice and destroyed the laboratory conditions necessary for a fair election by offering and conferring benefits to employees in order to induce employees to support the Union and/or vote in favor of the Union in the December 18, 2015 election.

Nuverra respectfully requests that a hearing be scheduled so that it may present evidence of the objectionable conduct described above, and that, following that hearing, the Regional Director set aside the results of the December 18, 2015 election in the above-captioned matter and direct a second election, so that employees may exercise their right to vote under conditions not tainted by the objectionable conduct described above. Pursuant to Section 106.69(a), Nuverra has submitted this date to the Regional Director its offer of proof in support of the Objections set forth herein.

DATED: December 28, 2015

/s/ Daniel B. Pasternak

D. Lewis Clark Jr.

Daniel B. Pasternak

SQUIRE PATTON BOGGS (US) LLP

One East Washington Street, Suite 2700

Phoenix, Arizona 85004

*Attorneys for Employer*

*Nuverra Environmental Solutions, Inc.*



**CERTIFICATE OF SERVICE**

The undersigned, an attorney, hereby certifies that he filed the following **EMPLOYER NUVERRA ENVIRONMENTAL SOLUTIONS, INC.'S OBJECTIONS TO ELECTION** via the NLRB's E-Filing System and served copies on the following persons via electronic mail to the email addresses indicated below and via U.S. mail to the mailing addresses indicated below, each on December 28, 2015, pursuant to Sections 102.69 and 102.114 of the Board's Rules and Regulations:

Allen Binstock, Regional Director  
c/o Paul Rainey, Field Examiner  
National Labor Relations Board – Region 8  
1240 East 9th Street, Suite 1695  
Cleveland, Ohio 44199-2086  
Email: paul.rainey@nlrb.gov

John Doll, Esq.  
Doll, Jansen & Ford  
111 West First Street, Suite 1100  
Dayton, Ohio 45402  
Email: jdoll@djflawfirm.com

/s/ Daniel B. Pasternak  
D. Lewis Clark Jr.  
Daniel B. Pasternak  
SQUIRE PATTON BOGGS (US) LLP  
One East Washington Street, Suite 2700  
Phoenix, Arizona 85004  
*Attorneys for Employer*  
*Nuverra Environmental Solutions, Inc.*

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
WASHINGTON, D.C.**

NUVERRA ENVIRONMENTAL SOLUTIONS, INC.,

and

Case 8-RC-164447

TEAMSTERS LOCAL UNION #348

**EMPLOYER'S REQUEST FOR REVIEW  
OF REGIONAL DIRECTOR'S DECISION AND ORDER  
OVERRULING OBJECTION AND CERTIFICATION OF REPRESENTATIVE**

# **EXHIBIT 3**

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 8**

NUVERRA ENVIRONMENTAL SOLUTIONS, INC.

and

Case 8-RC-164447

TEAMSTERS LOCAL UNION #348

**EMPLOYER NUVERRA ENVIRONMENTAL SOLUTIONS, INC.'S  
NOTICE OF PARTIAL WITHDRAWAL OF OBJECTIONS TO ELECTION**

Employer Nuverra Environmental Solutions, Inc. ("Nuverra") hereby provides notice that it withdraws Objection No. 1 and Objection No. 2 to the December 18, 2015 election in the above-captioned matter. Nuverra does not withdraw Objection No. 3 to the December 18, 2015 election in the above-captioned matter. Pursuant to the Order Directing Hearing and Notice of Hearing issued in connection therewith, Nuverra will present its evidence in support of Objection No. 3 before a duly designated hearing officer on January 13, 2016.

DATED: January 12, 2016

/s/ Daniel B. Pasternak

D. Lewis Clark Jr.

Daniel B. Pasternak

SQUIRE PATTON BOGGS (US) LLP

One East Washington Street, Suite 2700

Phoenix, Arizona 85004

W. Michael Hanna

SQUIRE PATTON BOGGS (US) LLP

4900 Key Tower

127 Public Square

Cleveland, Ohio 44114

*Attorneys for Employer*

*Nuverra Environmental Solutions, Inc.*

**CERTIFICATE OF SERVICE**

The undersigned, an attorney, hereby certifies that he filed the following **EMPLOYER NUVERRA ENVIRONMENTAL SOLUTIONS, INC.'S NOTICE OF PARTIAL WITHDRAWAL OF OBJECTIONS TO ELECTION** via the NLRB's E-Filing System and served copies on the following persons via electronic mail to the email addresses indicated below and via U.S. mail to the mailing addresses indicated below, each on January 12, 2016, pursuant to Sections 102.69 and 102.114 of the Board's Rules and Regulations:

Allen Binstock, Regional Director  
c/o Paul Rainey, Field Examiner  
National Labor Relations Board – Region 8  
1240 East 9th Street, Suite 1695  
Cleveland, Ohio 44199-2086  
Email: paul.rainey@nlrb.gov

John Doll, Esq.  
Doll, Jansen & Ford  
111 West First Street, Suite 1100  
Dayton, Ohio 45402  
Email: jdoll@djflawfirm.com

/s/ Daniel B. Pasternak

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
WASHINGTON, D.C.**

NUVERRA ENVIRONMENTAL SOLUTIONS, INC.,

and

Case 8-RC-164447

TEAMSTERS LOCAL UNION #348

**EMPLOYER'S REQUEST FOR REVIEW  
OF REGIONAL DIRECTOR'S DECISION AND ORDER  
OVERRULING OBJECTION AND CERTIFICATION OF REPRESENTATIVE**

# **EXHIBIT 4**

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 8

RECEIVED  
FEB 02 2016  
BY:.....

NUVERRA ENVIRONMENTAL SOLUTIONS, INC

Employer

and

Case 8-RC-164447

TEAMSTERS LOCAL #348

Petitioner

**HEARING OFFICER'S REPORT ON OBJECTIONS**

This report contains my findings and recommendations regarding the Employer's Objections to conduct affecting the results of the election in the above matter. Based upon the record in the case, my observation of the witnesses, examination of all exhibits, resolution of the credibility of the witnesses, and findings of fact, I recommend that the Employer's Objection No. 3 be sustained and that the December 18, 2015 election be set aside.

**I. Procedural History**

Pursuant to a petition filed on November 18, 2015, and a Stipulated Election Agreement approved by the Regional Director on November 30, 2015, an election was conducted on December 18, 2015 among the employees in the following described unit:

*All Full-time and regular Part-time Drivers at the Employer's Diamond, OH location, but excluding all other employees, including supervisory, managerial, clerical, sales, professional and guards as defined by the Act.*

The Tally of Ballots that issued after the election on December 18, 2015 showed that of approximately 25 eligible voters, all 25 cast ballots, of which 13 were cast for the Petitioner, and 12 against the Petitioner. There were no challenged ballots.

On December 28, 2015, the Employer filed timely Objections to Conduct Affecting the Results of the Election, a copy of which was served on the Petitioner. A copy of the Employer's Objections is attached.

Pursuant to Section 102.69 of the Board's Rules and Regulations, the Regional Director issued an Order Directing Hearing on Objections and Notice of Hearing (Order) which directed that a hearing be held for the purpose of receiving evidence to resolve the issues raised by the Employer's Objection Nos. 1 through 3.

On January 12, 2016, the Employer requested withdrawal of Objection Nos. 1 and 2, and the Regional Director approved the Employer's request.

Pursuant to the Regional Director's Order, a hearing was held before me on January 13, 2016 in Cleveland, Ohio. The parties appeared and participated at the hearing and were given full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing on the issues. The Petitioner and the Employer each called a single witness and provided case law to support their positions.

## **II. The Employer's Objection**

The Employer argues in Objection No. 3 that during the critical period, the Union interfered with the conduct of a free and fair election by offering and conferring benefits to employees in order to induce them to vote for the Union. Specifically, the Employer alleges that during the critical period, the Union provided free Christmas hams to employees in the proposed bargaining unit.

## **III. Record Evidence**

At the outset of the hearing, the parties reached the following three stipulations:

1. At least one Nuverra employee, who was a member of the proposed bargaining unit, was given a Christmas ham on either December 11 or December 12, 2015, at no charge.
2. The date that the petition for election was filed was November 18, 2015, and the date of the election was December 18, 2015.
3. At the election, the number of votes cast for the Union was 13, the number of votes cast against the Union was 12, and there were 25 eligible voters.

The Employer presented a six-page newsletter entitled "348 News," which the Union mailed to all Nuverra employees who were members of the proposed bargaining unit after the Union received the *Excelsior* list. The front page of the newsletter prominently displays a "2015 Holiday Ham Giveaway" that includes a "Free Ham for Every Member" and further states that "Only member or spouse can pick up ham, either day. No Exceptions." Additionally, there is a paragraph on the front page that concludes with "Please take time to stop by as we extend safe and happy holiday greetings to all our members, their families and friends." The flier does not specifically mention Nuverra employees, nor is there anything in the flier's description that indicates that the holiday ham giveaway was linked to the Nuverra organizing campaign.

Union Local 348 Business Representative Wayne Trivelli testified that Local 348 publishes its newsletter about three or four times per year, and that this particular newsletter was sent to all members of Local 348, as well as to all employees of Nuverra from the proposed bargaining unit. The Union sent the newsletters to Nuverra employees sometime around December 2 or 3, 2015. Sometime thereafter, Trivelli received a phone call from a Nuverra employee who asked whether Nuverra employees could pick up a ham even though they were not yet members of Local 348. Trivelli informed the employee that Nuverra employees were eligible to come to the union hall to receive a free ham.

The Union kept a record of who collected free hams during the giveaway, and according to Trivelli, the Union gave hams to seven Nuverra employees who were in the proposed bargaining unit. On the record, the parties agreed that the value of the hams was roughly ten to twelve dollars apiece.

Trivelli further testified that the holiday ham giveaway is a yearly event, that the Union typically invites its members and employees in prospective bargaining units to participate, and that it was open to the individuals to whom the Union sent its newsletter.

#### IV. Law and Analysis

It is well settled that representation elections are not lightly set aside.<sup>1</sup> To the contrary, there is a strong presumption that ballots cast under specific Board procedural safeguards accurately reflect the wishes of employees.<sup>2</sup> The burden of proof on parties seeking to have a Board-supervised election set aside is a heavy one. This burden is not met by proof of misconduct, but rather, specific evidence is required, showing not only that unlawful acts occurred, but also that they interfered with the employees exercise of free choice to such an extent that they materially affected the results of the election.<sup>3</sup>

Conduct during the critical period that creates an atmosphere rendering improbable free choice warrants invalidating an election.<sup>4</sup> In election proceedings, it is the Board's function to provide a laboratory in which an experiment may be conducted under conditions as nearly ideal as possible, to determine the uninhibited desires of the employees.<sup>5</sup>

The Board has held that a union may not give voters anything of tangible economic benefit during the critical period before an election.<sup>6</sup> Even when such gratuities are offered upon the same terms to employees who make no pledge of support, the Board has explained, they impose upon voters an implicit constraint to vote for the donor Union.<sup>7</sup>

Although a payment to an employee during a pre-election campaign does not require a *per se* finding that the employee's right to make a free and uncoerced choice of a bargaining representative has been destroyed, it is objectionable if it "has a reasonable tendency to influence the election outcome."<sup>8</sup> The test is objective and requires consideration of a number of factors, including the size of the benefit in relation to its stated purpose for granting it; the number of employees receiving it; how employees would reasonably view its purpose; and the timing of the benefit.<sup>9</sup>

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<sup>1</sup> Colgate Scaffolding & Equipment Corp., 354 NLRB 544, 546 (2009).

<sup>2</sup> Id.

<sup>3</sup> Bonanza Aluminum Corp., 300 NLRB 584, 590 (1990).

<sup>4</sup> See General Shoe Corp., 77 NLRB 124 (1948).

<sup>5</sup> Id. at 127.

<sup>6</sup> Freund Banking Co. v. NLRB, 165 F.3d 928, 931-32 (1999) (citing Mailing Servs., Inc., 293 NLRB. 565, 565-66 (1989) (medical screenings) and Wagner Elec. Corp., 167 NLRB 532, 532-33 (1967) (life insurance)).

<sup>7</sup> Mailing Servs., *supra* at 565.

<sup>8</sup> Gulf States Cannery, Inc., 242 NLRB 1326, 1327 (1979).

<sup>9</sup> B & D Plastics, Inc., 302 NLRB 245 (1991).



The Board has declined to set aside elections where the alleged benefit was conferred to employees in the context of a legitimate form of campaign propaganda.<sup>10</sup> The Board has long held that a union's or an employer's provision of refreshments and dinners during organizing campaigns is within the realm of permissible conduct.<sup>11</sup>

The evidence surrounding the Employer's objection is not in dispute. Rather, the Union and the Employer disagree about the applicable legal standard. The cases cited by the Employer and the Union reveal an important difference in the way that one could view the distribution of the hams. In the cases that the Union cites in support of its position that the election should not be set aside, the benefit that was granted to employees was given in the context of union organizational meetings and rallies that were part of an organizing campaign. See, *In re Lamar Co, LLC*,<sup>12</sup> *In re Raleigh County Comm on Aging, Inc.*,<sup>13</sup> *NLRB v. Adam Mfg. Co, Inc.*,<sup>14</sup> and *Sequel to New Mexico, LLC*.<sup>15</sup> Conversely, in the cases that the Employer cites, the election was set aside because the Union or Employer granted a benefit that would have a tendency to interfere with the conduct of the election. See, *General Cable Corp.*<sup>16</sup>, *Mailing Services, Inc.*<sup>17</sup> *McCarty Processors*,<sup>18</sup> and *Freund Banking Co. v. NLRB*.<sup>19</sup>

Board case law draws a distinction between providing food and drink to employees pursuant to a meeting or gathering that a Union or Employer is holding for employees, and simply providing a benefit to employees.<sup>20</sup> For instance, in *In re Lamar*, the Board found that the union's conduct was not objectionable when it spent a total of \$400 on refreshments at seven organizing meetings and \$815 on a dinner for approximately seven employees, their spouses and significant others. However, in *Mailing Services, Inc.*, the Board set the election aside because the Union provided free medical screenings to employees two days prior to the election.<sup>21</sup> Also, in *General Cable Corp.*, the Board held that the Union engaged in objectionable conduct by providing prospective bargaining unit members and their spouses with turkeys and five dollar gift certificates.

In *In re Lamar*, as well as other cases cited by the Union, the Board did not apply the *B & D Plastics* test, and instead carved out an exception for food and drink provided to employees in

<sup>10</sup> *In re Raleigh County Comm on Aging, Inc.*, 331 NLRB 925 (2000) (citing *R. H. Osbrink Mfg. Co.*, 114 NLRB 940, 942 (1955)).

<sup>11</sup> *In re Lamar Co., LLC*, 340 NLRB 979 (2003) (citing *Chicagoland Television News, Inc.*, 328 NLRB 367 (1999); *Fashion Fair, Inc.*, 157 NLRB 1645 (1966).

<sup>12</sup> 340 NLRB 979 (2004).

<sup>13</sup> 331 NLRB 925 (2000), the Board found that the Employer's pre-election announcement of a victory dinner was nothing more than a "legitimate form of campaign propaganda." (citing *R. H. Osbrink Mfg. Co.*, 114 NLRB 940, 942 (1955)).

<sup>14</sup> 129 F.3d 1264 (6th Cir. 1997).

<sup>15</sup> 361 NLRB No 127 (2014) (employer's Christmas party that was held on the first day of the election was unobjectionable).

<sup>16</sup> 170 NLRB 1682 (1968).

<sup>17</sup> 293 NLRB 565 (1989).

<sup>18</sup> 286 NLRB 703 (1987) (election set aside because the Union promised to waive the collection of accrued dues).

<sup>19</sup> 165 F.3d 928 (1999).

<sup>20</sup> Compare *In re Lamar Co.*, *supra*, with *General Cable Corp.*, *supra*.

<sup>21</sup> 293 NLRB 565.

the course of legitimate campaigning.<sup>22</sup> Here, the evidence presented shows that the Union did not provide the hams to employees pursuant to a campaign or organizational meeting. Instead, the hams were provided as a benefit to both union members and prospective union members, which is factually analogous to *Mailing Services, Inc.* and *General Cable Corp.*

Because the Union did not distribute the hams pursuant to a legitimate campaign activity, the hams were a clearly granted benefit and the *B & D Plastics Test* applies.<sup>23</sup> Under first factor, the size of the benefit in relation to the stated purpose for granting it, the parties agreed that the size of the benefit (the cost of the ham) was about ten to twelve dollars. According to the Union's newsletter, the Union was offering the hams to "extend safe and happy holiday greetings to all our members, their families and friends." A \$10 to \$12 gift to membership and friends is proportionate for the Union's stated purpose: to celebrate the holidays.

While the gift passes the first factor of the *B & D Plastics* test, the remaining factors of this test weigh in favor of finding that the gift constitutes objectionable conduct.

With regard to the second factor, the number of employees receiving the gift, Union Business Agent Trivelli testified that seven Nuverra employees received hams. Although the Union sent the newsletter to all of the members of the proposed bargaining unit, it is unclear whether any of the bargaining unit members beyond the seven who received the hams understood that Nuverra employees were eligible for the giveaway. Regardless, this election was determined by one vote, so the number of employees that benefited from the hams is sufficient to affect the outcome of the election.<sup>24</sup>

Under the third factor, how employees would reasonably view the purpose of a gift, the Board considers the context in which the gift is made to determine whether the employees would reasonably perceive it as a favor they might feel obligated to repay.<sup>25</sup> As the Board has explained, the objective standard requires consideration of "whether the value of the economic benefit 'would reasonably tend to have the effect that [the employees] would feel an obligation to vote'" for the benefactor.<sup>26</sup> Here, a reasonable employee would believe that the hams were being distributed to Nuverra employees because of the upcoming election, and although the value of the benefit is not large, it would have a tendency to persuade a voter to feel indebted. Therefore the third factor supports a finding of objectionable conduct.

The fourth factor, the timing of the benefit, also supports a conclusion of objectionable conduct. The Union utilized the *Excelsior* list it received from the Employer to offer the hams to employees during the critical period. Nuverra employees collected their free hams on December

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<sup>22</sup> See *In re Raleigh County*, supra, at 925 (disagreeing with the Hearing Officer's use of the *B & D Plastics* test because *In re Raleigh County* did not involve "a clearly granted benefit").

<sup>23</sup> *Id.*

<sup>24</sup> *NLRB v. Savair Mfg. Co.*, 414 U.S. 270, 278 (1973) (determining effect of objectionable conduct by swinging votes to objector's side in the amount of potentially-influenced employees where the change in one employee's vote would have changed the result of the election).

<sup>25</sup> *Sunrise Rehabilitation Hosp.*, 320 NLRB 212, 213 (1995).

<sup>26</sup> *Gulf States Cannery, Inc.*, 242 NLRB at 1327.

11 or 12, six or seven days prior to the election, which is sufficiently close to the election to have a tendency to affect the employees' votes.<sup>27</sup>

Overall, the four factors balance in favor of my conclusion that the gift constitutes objectionable conduct that has a reasonable tendency to influence the outcome of the election.

## **V. Conclusion and Recommendation**

The Union's motivation—however innocent it may be—does not change the fact that it distributed a benefit to eligible voters during the critical period before an election. Based on these facts, I conclude that such a gift would reasonably tend to influence the outcome of the election. As such, the Employer's Objection No. 3 should be sustained, and I recommend that the election held on December 18, 2015 be set aside and that a new election be conducted.

### **Appeal Procedure:**

Pursuant to Section 102.69(c)(1)(iii) of the Board's Rules and Regulations, any party may file exceptions to this Report, with a supporting brief if desired, with the Regional Director of Region 8 by Tuesday, February 16, 2016. A copy of such exceptions, together with a copy of any brief filed, shall immediately be served on the other parties and a statement of service filed with the Regional Director.

Exceptions may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the exceptions should be addressed to the Regional Director, National Labor Relations Board, 1240 East 9th Street, Suite 1695, Cleveland Ohio 44119.

Pursuant to Sections 102.111 – 102.114 of the Board's Rules, exceptions and any supporting brief must be received by the Regional Director by close of business (5:00 PM) on the due date. If e-Filed, it will be considered timely if the transmission of the entire document through the Agency's website is accomplished by no later than 11:59 p.m. Eastern Time on the due date.

Within 7 days from the last date on which exceptions and any supporting brief may be filed, or such further time as the Regional Director may allow, a party opposing the exceptions may file an answering brief with the Regional Director. An original and one copy shall be submitted. A copy of such answering brief shall immediately be served on the other parties and a statement of service filed with the Regional Director.

Dated this 1<sup>st</sup> day of February 2016, in Cleveland, Ohio.

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<sup>27</sup> See General Cable Corp., 170 NLRB 1682, 1682 (1968) (finding \$5 gift certificates given to employees 5 days before election objectionable) and Wagner Electric Corp., 167 NLRB 532, 532 (1967) (finding offer of \$500 life insurance mailed to employees 13 days before election objectionable).

/s/ Kyle Vuchak

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Kyle Vuchak  
Hearing Officer  
National Labor Relations Board  
Region 8

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
WASHINGTON, D.C.**

NUVERRA ENVIRONMENTAL SOLUTIONS, INC.,

and

Case 8-RC-164447

TEAMSTERS LOCAL UNION #348

**EMPLOYER'S REQUEST FOR REVIEW  
OF REGIONAL DIRECTOR'S DECISION AND ORDER  
OVERRULING OBJECTION AND CERTIFICATION OF REPRESENTATIVE**

# **EXHIBIT 5**

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 8**

**NUVERRA ENVIRONMENTAL SOLUTIONS, INC**

**Employer**

**and**

**Case 8-RC-164447**

**TEAMSTERS LOCAL #348**

**Petitioner**

**DECISION AND ORDER OVERRULING OBJECTION AND  
CERTIFICATION OF REPRESENTATIVE**

Pursuant to the provisions of a Stipulated Election Agreement, an election was conducted on December 18, 2015 among a unit of drivers of the Employer. The tally of ballots shows that of the 25 eligible voters, 13 cast votes for the Petitioner, 12 cast votes against the Petitioner, and there were no challenged ballots.

On December 28, 2015, the Employer filed three objections to the election. The undersigned approved the Employer's request to withdraw two objections, and on January 13, 2015 a hearing was held on the remaining objection (the Objection). The Objection concerns Petitioner's offering and conferring benefits on employees in the form of a holiday ham. Following a hearing on the Objection, the Hearing Officer issued a report recommending that the Objection be sustained, that the December 18, 2015 election be set aside and a new election be conducted.

The Petitioner timely filed exceptions to the Hearing Officer's report in which it contends that the Hearing Officer erred in concluding that Petitioner's actions would reasonably tend to interfere with the outcome of the election. The Employer filed a reply to the exceptions.

I have carefully reviewed the Hearing Officer's rulings made at the hearing and find that they are free from prejudicial error. Accordingly, the Hearing Officer's rulings are affirmed. In considering the Petitioner's exceptions, I rely on the Hearing Officer's factual findings and credibility resolutions, which I adopt as fully supported in the record.

After a review of the record in light of the exceptions and the parties' briefs, and for the reasons described below, I find merit to the Petitioner's exceptions regarding the Objection, and I overrule the Objection.

## **I. THE OBJECTION**

The Employer argues that the Petitioner interfered with the conduct of a free and fair election by offering and conferring benefits on employees during the critical period in order to induce them to vote for the Petitioner. Specifically, the Employer alleges that the Petitioner offered and provided free hams to employees in the proposed bargaining unit.

At that outset, I note that the parties do not dispute the material facts regarding the Objection. Those facts are succinctly set forth in the Hearing Officer's Report and shall not be repeated here, except as necessary.

The Hearing Officer, utilizing the four-part analysis in *B&D Plastics, Inc.*,<sup>1</sup> concluded that the Petitioner's distribution of the hams to eligible voters would reasonably tend to influence the outcome of the election. I agree with the Hearing Officer that *B&D Plastics, Inc.* provides the proper legal framework for resolving the Objection.<sup>2</sup> However, as further explained below, I conclude, contrary to the Hearing Officer, that the Petitioner has rebutted the inference that this benefit was coercive.

As explained by the Board in *B&D Plastics, Inc.*, the objective standard it applies in pre-election benefits cases is as follows,

To determine whether granting the benefit would tend unlawfully to influence the outcome of the election, we examine a number of factors, including: (1) the size of the benefit conferred in relation to the stated purpose for granting it; (2) the number of employees receiving it; (3) how employees reasonably would view the purpose of the benefit; and (4) the timing of the benefit. In determining whether a grant of benefits is objectionable, the Board has drawn the inference that benefits granted during the critical period are coercive. It has, however, permitted the employer to rebut the inference by coming forward with an explanation, other than the pending election, for the timing of the grant or announcement of such benefits.

In *B&D Plastics*, the employer granted all unit employees a day off with pay during the critical period. The Board concluded that the employer had not rebutted the inference that its conduct was objectionable because it could not demonstrate that the timing of the benefit was unrelated to the pending election. *B&D Plastics, Inc.*, at 245-246. See also, *Lampi, L.L.C.*, 322 NLRB 502 (1996) (applying *B&D Plastics*' rebuttable inference test to a wage increase the employer announced during the critical period).

In reliance on the above authority, I must consider whether Petitioner has succeeded in rebutting the inference that its holiday ham program was objectionable.

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<sup>1</sup> 302 NLRB 245 (1991).

<sup>2</sup> In this regard, I also agree with the Hearing Officer that the line of Board cases involving food and refreshments provided by employers and unions at campaign meetings is not applicable here. See, e.g., *Chicagoland Television News, Inc.*, 328 NLRB 367 (1999) and cases cited therein. The distribution of the hams was not part of a campaign meeting.

The Hearing Officer found, and I agree, that the \$10-\$12 size of the benefit was proportional to the stated purpose of the gift which was to celebrate Christmas. As noted in the Hearing Officer's decision, the Petitioner's stated purpose of the gift of a holiday ham was to "extend safe and happy holiday greetings to our members, their families and friends." Thus, in agreement with the Hearing Officer, I find that the evidence regarding the first factor of the objective test weighs in favor of rebutting the inference that the Petitioner was seeking to influence the election.

Concerning the second factor, the number of employees receiving the gift, I agree with the analysis of the Hearing Officer that this factor does not weigh in favor of rebutting the inference. Less than one-third of the eligible voters in the election ultimately received a ham but, given that the election was won by only one vote, that number was potentially sufficient to affect the outcome of the election.

So the decisive factors in this analysis are the timing of the gift and how reasonable employees would view the purpose of the gift. I will first discuss the timing of the gift.

With regard to the timing of the announcement of the holiday hams, the record evidence demonstrates that, for many years around the December holidays, the Petitioner has given away hams to its members. In around early December 2015, Petitioner publicized the ham giveaway as it normally does in its quarterly newsletter to its members. Consequently, the record evidence reflects that the Petitioner's announcement of the ham giveaway had nothing whatsoever to do with the pending election but was part of an established past practice at Christmas time.

I disagree with the Employer's assertion that the Union's past practice regarding the holiday hams is irrelevant under the *B&D Plastics, Inc.* analysis. Evidence of past practice is clearly relevant to the question of whether the announcement of a benefit is related to the pending election. Here, I find that the timing of the ham announcement was consistent with what the Petitioner had done in the past, and that its connection with the pending election was completely coincidental. Therefore, the Petitioner has rebutted the inference that the timing of the gift was related to the upcoming election.

The final criterion to consider is how reasonable employees would view the purpose of the gift. Contrary to the Hearing Officer, I find that this factor also weighs in favor of the Petitioner.

Around the time it was mailing the newsletter to its members, the Petitioner learned the addresses of the Employer's employees via the *Excelsior* list. As noted by the Hearing Officer, the Petitioner has typically sent its newsletter to employees in prospective bargaining units. Thus sending the newsletter to the Employer's employees was not a departure from past practice and was, no doubt, aimed at apprising potential voters of what being represented by the Union would be like. It is undisputed that the newsletter contained many articles and features and that the offer of a holiday ham to members was but one small item. The newsletter, moreover, contained no mention of the Petitioner's organizing campaign at the Employer's facility nor did it offer the hams to anyone other than *members, their families and friends*. There is no evidence that the Petitioner included information along with the newsletter that was sent to employees in the



proposed unit indicating that, although not members, they could receive a free ham. Likewise, the un rebutted testimony of Petitioner's Business Representative Wayne Trivelli was that the Petitioner's only communication to the Employer's employees about the hams, other than a single phone call from one employee, was the December newsletter. I find that the probative evidence establishes that the Petitioner did not announce a benefit to the Employer's employees via the newsletter – the newsletter announcement of the holiday hams was clearly directed at members and did not contemplate offering them to the Employer's employees.

The gift of hams to unit employees did not result from any initiative of the Petitioner but only after a call was made to the Petitioner by one of those employees. That employee was told that he was eligible to receive a ham but there is no evidence that he was directed to tell others that they were eligible to receive a Christmas gift. After the election, the Union checked its records and learned that seven of the Employer's employees including the initial caller ended up going to the Petitioner's hall to pick up a ham. Notably, however, the Petitioner did not pursue these employees or any other unit employees to offer them a ham. This critical fact distinguishes this case from the situation presented in *General Cable Corp.*,<sup>3</sup> where a union chose to go to the employer's facility to present gifts to employees who had not attended a meeting at the union hall where the gifts had been distributed. The Board found the latter conduct to be objectionable because the union's outreach could be objectively viewed as an attempt to influence votes. Here, however, the Petitioner never took the initiative to offer the gifts to unit employees nor did it pursue them with gifts in hand. Furthermore, there was no evidence that the delivery of the ham was accompanied by any statements from agents of the Petitioner that would make the employees feel beholden to vote for union representation.

The material evidence therefore objectively demonstrates that the holiday hams were provided on account of the upcoming holidays and not because of the pending election: if the Petitioner was intent on swaying voters in anticipation of the election, it certainly would have used a more direct manner of notifying the voters about the hams. Such was the case in *Mailing Services, Inc.*,<sup>4</sup> where, after announcing to employees that it would do so, a union parked two mobile medical units across from the employee entrance to the employer's factory and provided employees with free medical screenings. By contrast, the Petitioner here did not publicize the hams as a benefit to which the Employer's employees were entitled. Only when directly questioned did the Petitioner tell a single employee that the hams were available to those employees. Unlike in *Mailing Services, Inc.*, the Petitioner did not create a special event targeted at the potential voters; rather, the holiday ham giveaway was an established annual tradition. As a result, I must conclude that unit employees would not have reasonably concluded that the purpose of the gift of a holiday ham was to influence their vote in the election.

Under all of these circumstances, I conclude that Petitioner has rebutted the inference that the holiday ham giveaway was objectionable. A review of the criteria used by the Board in assessing pre-election gifts demonstrates that the gift was of negligible value, was part of a traditional Christmas event sponsored by the Petitioner, was not part of any initiative directed at potential voters by the Petitioner and could not have been viewed by any reasonable employee as

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<sup>3</sup> 170 NLRB 1682 (1968).

<sup>4</sup> 293 NLRB 565 (1989).

an attempt to influence his or her vote. Accordingly, I find that Petitioner's actions in relation to the holiday hams did not interfere with employees' exercise of free choice regarding union representation.

## **II. CONCLUSION**

Based on the above and having carefully reviewed the entire record, the hearing officer's report and recommendations, and the exceptions and arguments made by the Petitioner and Employer, I overrule the Objection, and I shall certify the Petitioner as the representative of the appropriate bargaining unit.

## **III. CERTIFICATION OF REPRESENTATIVE**

**IT IS HEREBY CERTIFIED** that a majority of the valid ballots have been cast for Teamsters Local #348, and that it is the exclusive representative of all the employees in the following bargaining unit:

All Full-Time and regular Part-Time Drivers at the Employer's Diamond, OH location, but excluding all other employees, including supervisory, managerial, clerical, sales, professionals, and guards as defined by the Act.

## **IV. REQUEST FOR REVIEW**

Pursuant to Section 102.69(c)(2) of the Board's Rules and Regulations, any party may file with the Board in Washington, DC, a request for review of this decision. The request for review must conform to the requirements of Sections 102.67(e) and (i)(1) of the Board's Rules and must be received by the Board in Washington by Wednesday, April 6, 2016. If no request for review is filed, the decision is final and shall have the same effect as if issued by the Board.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the Request for Review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated at Cleveland, Ohio this 22<sup>nd</sup> day of March 2016.

/s/Allen Binstock  
Allen Binstock  
Regional Director, Region 8  
National Labor Relations Board

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
WASHINGTON, D.C.**

NUVERRA ENVIRONMENTAL SOLUTIONS, INC.,

and

Case 8-RC-164447

TEAMSTERS LOCAL UNION #348

**EMPLOYER'S REQUEST FOR REVIEW  
OF REGIONAL DIRECTOR'S DECISION AND ORDER  
OVERRULING OBJECTION AND CERTIFICATION OF REPRESENTATIVE**

# **EXHIBIT 6**

**OFFICIAL REPORT OF PROCEEDINGS  
BEFORE THE  
NATIONAL LABOR RELATIONS BOARD**

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**In the Matter of:**

**Case No.: 08-RC-164447**

**NUVERRA ENVIRONMENTAL  
SOLUTIONS, INC.**

**Employer**

**And**

**TEAMSTERS LOCAL UNION #348  
Petitioner**

**Place: Cleveland, OH  
Date: 01/13/16  
Pages: 1-47  
Volume: 1**

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1 UNITED STATES OF AMERICA  
2 BEFORE THE NATIONAL LABOR RELATIONS BOARD  
3 REGION 8  
4 ~~~~~  
5

6 NUVERRA ENVIRONMENTAL  
7 SOLUTIONS, INC.  
8 Employer

9 and

Case No. 08-RC-164447

10  
11 TEAMSTERS LOCAL UNION #348  
12 Petitioner  
13  
14 ~~~~~  
15

16 The above-entitled matter came on  
17 for hearing pursuant to notice, before Kyle A.  
18 Vuchak, Hearing Officer, at The National  
19 Labor Relations Board, 1695 A.J. Celebrezze  
20 Federal Building, 1240 East Ninth Street,  
21 Cleveland, Ohio, on Wednesday, January  
22 13, 2016, at 10:00 a.m.  
23  
24  
25

A P P E A R A N C E S

On behalf of Teamsters Local Union #348:

Doll, Jansen & Ford, by

JULIE C. FORD, ESQ.

111 West First Street, Suite 1100

Dayton, OH 45402-1156

(937) 461-5310

jford@djflawfirm.com

On behalf of Nuverra Environmental  
Solutions, Inc.:

Squire Patton Boggs, LLP, by

W. MICHAEL HANNA, ESQ.

4900 Key Tower, 127 Public Square

Cleveland, OH 44114

(216) 479-8500

mike.hanna@squirepb.com

~ ~ ~ ~ ~

ALSO PRESENT:

Wayne Trivelli

~ ~ ~ ~ ~

1 Exhibit 3 has been admitted into evidence.

2 Prior to the hearing, off the  
3 record, the parties met and discussed the  
4 subpoena issue that had been raised, and that  
5 subpoena issue has been settled.

6 Is that true, Counsel for the  
7 Employer?

8 MR. HANNA: With the stipulation,  
9 yes.

10 HEARING OFFICER VUCHAK: With the  
11 stipulation, that's right. We'll get to that  
12 next.

13 Is the Union okay with that?

14 MS. FORD: Yes, sir.

15 HEARING OFFICER VUCHAK: So the parties have  
16 agreed to stipulate that at least one Nuverra  
17 employee, who was a member of the proposed  
18 bargaining unit, was given a Christmas ham on  
19 either December 11th or December 12th, 2015.

20 MR. HANNA: The only change would  
21 be, at no charge.

22 HEARING OFFICER VUCHAK: At no charge.

23 MS. FORD: That's fine. I think  
24 that's implied and was given, but we're fine  
25 with that.

1 to briefly state their position as to the issue  
2 that has been raised by the Employer's  
3 objection.

4 Mr. Hanna first, please.

5 MR. HANNA: Yes.

6 Based upon the stipulations that  
7 the parties have reached today, on or about  
8 December 11th and 12th of 2015, the Teamster  
9 Union 348 offered a Christmas giveaway.  
10 According to its flier, which we introduced as  
11 evidence, the flier indicated that only members  
12 or spouses can pick up the ham on either day,  
13 no exceptions, and free ham for every member.

14 We received a stipulation that at  
15 least one member of the proposed bargaining  
16 unit at Nuverra received a Christmas ham free  
17 of charge. We believe that that is --  
18 constitutes conduct which would impact the free  
19 and fair election by giving away -- conferring  
20 a benefit to potential voters. And so, based  
21 upon that, that's the basis of our charge.

22 HEARING OFFICER VUCHAK: Thank you.

23 Ms. Ford?

24 MS. FORD: Thank you.

25 Mr. Hearing Officer, the evidence



1 occasionally?

2 A. Only occasionally.

3 Q. How often?

4 A. Roughly, like, every quarter of the  
5 year.

6 Q. So roughly four times a year?

7 A. Yeah. Three to four times a year.

8 Q. I guess my question is, was this  
9 prepared specifically because of the organizing  
10 campaign for 25 people at Nuverra?

11 A. No, ma'am.

12 Q. And to whom was this newsletter  
13 sent?

14 A. It was sent to all of our members  
15 of Local 348, and the people at Nuverra.

16 Q. Approximately how many members does  
17 Local 348 have?

18 A. Right around 1,300.

19 Q. And how did it come about that this  
20 was sent to the employees in the Nuverra  
21 bargaining unit?

22 A. In the past, when we've had a  
23 potential group that we're organizing, and if  
24 it falls in this -- around the holidays, we  
25 send a newsletter to the potential members to

1 -- because it is just a holiday thing that we  
2 do.

3 Q. Do you know when this was sent to  
4 the Nuverra employees?

5 A. Roughly December 2nd or 3rd.  
6 Approximately, yeah.

7 Q. How did you know who they were and  
8 how to send it to them?

9 A. From the Excelsior list that we  
10 received. So we had their names and addresses.

11 Q. And specifically with regard to the  
12 holiday ham giveaway, was there any other  
13 communication to the Nuverra employees about  
14 the existence of this holiday ham giveaway?

15 A. No.

16 Q. Is this something that was new in  
17 2015?

18 A. No. The Local has done this in  
19 years past.

20 Q. Every year?

21 A. Yes. Going back -- yeah.

22 Q. How did it come about, if you know,  
23 that any Nuverra -- we have a stipulation that  
24 at least one Nuverra employee took advantage of  
25 this holiday ham giveaway on Friday, December

1 11th, or Saturday, December 12th. Do you know  
2 how the Nuverra employees knew that this might  
3 be available to them even though they were not  
4 yet formally members?

5 A. I actually had a phone call from  
6 one employee from Nuverra, who had contacted  
7 and said that they had got the newsletter, and  
8 wanted to know if they could come down and get  
9 the ham because it was on the newsletter.

10 Q. Okay. And how did you respond?

11 A. I responded yes, they could.

12 Q. Okay.

13 A. If they felt they wanted to, they  
14 were welcome to come down.

15 Q. Okay.

16 A. It wasn't -- yeah, it wasn't -- it  
17 was, you know -- it was at their discretion.

18 Q. Has this occurred -- has there ever  
19 been a prior situation where there was an  
20 organizing campaign going on at the Local  
21 around the holidays and around the time of the  
22 holiday ham giveaway?

23 A. Yes.

24 Q. Have the employees -- or the  
25 potential members in the bargaining units being

1 organized then also been given an opportunity  
2 to come in and pick up a holiday ham?

3 A. Yes, they were.

4 Q. Was the availability of a holiday  
5 ham for any of the Nuverra employees  
6 conditioned in any way on supporting Local 348  
7 publicly?

8 A. No.

9 Q. Was it conditioned in any way on  
10 voting for Union representation in the  
11 NLRB-conducted election?

12 A. No.

13 Q. Do you know the approximate cost to  
14 the Union of each holiday ham that was given  
15 away?

16 A. Not exactly. If I had to give an  
17 estimate, I would say possibly 10 to \$12.

18 Q. Do you buy them at the local  
19 supermarket? Where does the Local get them?

20 A. No, we do not. We get them  
21 directly from the company that makes them.

22 Q. And about how many did you give  
23 away this year?

24 A. Approximately 1,000.

25 MS. FORD: I don't have any further

1 questions for Mr. Trivelli.

2 HEARING OFFICER VUCHAK: I just have a real  
3 quick question.

4 About how big were the hams?

5 THE WITNESS: They're a half -- a  
6 semi-boneless ham. So if you had to go by  
7 weight, I would -- there again, this is an  
8 estimate.

9 HEARING OFFICER VUCHAK: Sure.

10 THE WITNESS: And because they  
11 vary -- they're different sizes, different  
12 shapes, so they're all different -- I would  
13 have to guess five to seven pounds  
14 approximately.

15 HEARING OFFICER VUCHAK: Go ahead, Mr. Hanna.  
16 Cross-examination.

17 MR. HANNA: I just have a few  
18 questions, Mr. Trivelli.

19 CROSS-EXAMINATION OF WAYNE TRIVELLI  
20 BY MR. HANNA:

21 Q. To your knowledge, were the fliers,  
22 which has been marked as Exhibit Number 1, sent  
23 to everyone who was on the Excelsior list?

24 A. Yes.

25 Q. On the -- page 1 of the flier

1     that's in front of you, in the holiday ham  
2     giveaway portion it specifically states that  
3     only members or spouses can pick up ham on  
4     either day; is that correct?

5             A.     Yes.

6             Q.     And in bold and underlined it says;  
7     "No Exceptions"?

8             A.     Yes.

9             Q.     The Union made an exception for the  
10    Nuverra employees in the proposed bargaining  
11    unit that they could get the hams; is that  
12    correct?

13            A.     Yes.

14            Q.     Did you have any discussions with  
15    Union leadership about the availability of the  
16    ham for the Nuverra individuals in the proposed  
17    bargaining unit?

18            A.     Repeat the question, please.

19            Q.     Did you have any discussions with  
20    other members in the Union leadership -- I  
21    understand you're a business representative.  
22    Did you have any discussions with any 348  
23    officials when the question was asked, Hey, can  
24    we take advantage of this ham offer; or did you  
25    make that decision?

1           A.     That decision was made by -- yes, I  
2     did have a discussion with another Union  
3     official.

4           Q.     And what was the substance of that  
5     discussion?

6           A.     Just that we would do as we had  
7     done in the past with other groups that we were  
8     organizing campaigns and send them the offer  
9     for the ham, also.

10          Q.     So that discussion was held before  
11     the flier went out?

12          A.     Yes.

13          Q.     Once the flier went out -- let me  
14     back up a second.

15                 So was it the Union's hope at least  
16     that the prospective members of the bargaining  
17     unit would take the Union up on the offer of  
18     the ham?

19          A.     No.   It was an offer that was made.  
20     The newsletter was sent.

21          Q.     Once you received the telephone  
22     call from the employee saying, Can we take  
23     advantage of this; did you have follow-up  
24     discussions with the Union official as to, Is  
25     this something we want to do; or did you think

1 the member or their spouse or -- yeah.

2 Q. As opposed to their buddy or --

3 A. As opposed to some friend or --

4 Q. -- their roommate?

5 A. Yeah.

6 Q. And was that portion of the  
7 procedure, the rule, waived for the Nuverra  
8 employees?

9 A. No.

10 MS. FORD: That's all I have.

11 HEARING OFFICER VUCHAK: Recross?

12 MR. HANNA: Nothing further.

13 HEARING OFFICER VUCHAK: I just have a few  
14 questions.

15 About when did you receive the call  
16 from the Nuverra employee asking if prospective  
17 bargaining unit members could take advantage of  
18 this offer?

19 THE WITNESS: Approximately -- I  
20 would say approximately a week after we had  
21 sent the notice.

22 HEARING OFFICER VUCHAK: Do you remember when  
23 you sent the notice?

24 THE WITNESS: I believe the notice  
25 was sent on either December 2nd or 3rd,



1 approximately.

2 HEARING OFFICER VUCHAK: Did you only receive  
3 one call from a Nuverra employee?

4 THE WITNESS: Yes.

5 HEARING OFFICER VUCHAK: And when Nuverra  
6 employees showed up to collect their ham, did  
7 they have to give a name?

8 THE WITNESS: Yes.

9 HEARING OFFICER VUCHAK: And then, the person  
10 that was distributing the ham could reference a  
11 list; is that how it worked?

12 THE WITNESS: Yes, sir.

13 HEARING OFFICER VUCHAK: About how many hams  
14 were given to prospective members, do you know?

15 THE WITNESS: Of Nuverra, or total?

16 HEARING OFFICER VUCHAK: Of Nuverra.

17 THE WITNESS: Seven.

18 HEARING OFFICER VUCHAK: I don't have any  
19 more questions. I don't know if --

20 MS. FORD: I do now.

21 Do you have anything?

22 MR. HANNA: I do not.


23 HEARING OFFICER VUCHAK: Okay. Ms. Ford?

24 CONTINUED REDIRECT EXAMINATION

25 OF WAYNE TRIVELLI

## 1 CERTIFICATION

2  
3 This is to certify that the  
4 attached proceedings before the National Labor  
5 Relations Board (NLRB), Region 8, in the matter  
6 of NUVERRA ENVIRONMENTAL SOLUTIONS, INC. and  
7 TEAMSTERS LOCAL UNION #348, at Cleveland, Ohio  
8 on January 13, 2016, was held according to the  
9 record, and that this is the original,  
10 complete, and true and accurate transcript that  
11 has been given compared to the recording, at  
12 the hearing, that the exhibits are complete and  
13 no exhibits received in evidence or in the  
14 rejected exhibit files are missing.

15  
16  \_\_\_\_\_  
17

18 Buster Beck, Notary Public  
19 within and for the State of Ohio  
20

21 My commission expires February 22, 2020.  
22  
23  
24  
25

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
WASHINGTON, D.C.**

NUVERRA ENVIRONMENTAL SOLUTIONS, INC.,

and

Case 8-RC-164447

TEAMSTERS LOCAL UNION #348

**EMPLOYER'S REQUEST FOR REVIEW  
OF REGIONAL DIRECTOR'S DECISION AND ORDER  
OVERRULING OBJECTION AND CERTIFICATION OF REPRESENTATIVE**

# **EXHIBIT 7**

**EMPLOYER EXHIBITS**  
**BEFORE THE**  
**NATIONAL LABOR RELATIONS BOARD**

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**In the Matter of:**

**Case No.: 08-RC-164447**

**NUVERRA ENVIRONMENTAL  
SOLUTIONS, INC.**

**Employer**

**And**

**TEAMSTERS LOCAL UNION #348**  
**Petitioner**

**Place: Cleveland, OH**

**Date: 01/13/16**

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# 348



# NEWS

The Official Publication of

Teamsters Local 348, Akron, Ohio

## Executive Board Report

December 2015

We are pleased to publish another edition of 348 NEWS, the official publication of Teamsters Local #348. The 348 NEWS continues the pledge made by your executive board to provide effective communications to the membership. This publication is devoted solely to the welfare of our membership, their families and Teamsters Local #348. Please provide us with your feedback and your suggestions concerning topics to be covered and information that will be useful to you.

### HAPPY HOLIDAYS

As a special benefit for our members and their families, Teamsters Local #348 invites our members to the Holiday Ham Giveaway. Members or their spouse may stop by Teamsters Local #348 on Friday December 11th or Saturday December 12th from 9:00 a.m. to 5:00 p.m. to receive their holiday ham. Teamsters Local #348 is located at 272 West Market Street in Akron. Please take time to stop by as we extend safe and happy holiday greetings to all our members, their families and friends.

### INSIDE THIS EDITION

Inside this edition of the 348 NEWS you will find the names of our college scholarship winners. Teamsters Local #348 is proud to offer this benefit to our members and their families. On the back page you will find information on the James R. Hoffa Memorial Scholarship. Please check out this opportunity and make note of the scholarship deadline. Also inside this edition you will see important delegate nominations information. Please read carefully. Lastly check out the useful information from Team Legal.

To all our members, their families and friends, Teamsters Local #348 extends our wishes for a Merry Christmas and a Happy New Year.

Fraternally,

Patrick J. Darrow  
Secretary-Treasurer & Business Manager  
Call Teamsters Local #348 at (330) 434-3424

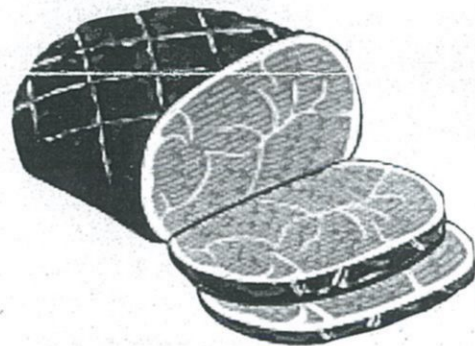


## Ham Giveaway

**Friday December 11th  
or Saturday December 12th**

**9:00 am to 5:00 pm**

**348 Union Hall  
272 West Market Street, Akron**



**Free Ham for Every Member!**

**Only member or spouse can  
pick up ham, either day.**

**No Exceptions**

*Happy Holidays*

**to our Members,  
Families, and Friends!**

Sponsored by Teamsters Local 348 CER Fund



**Important Delegate Nominations Information  
Contained on Page 3**



## **Teamsters Local 348 Executive Board**

**Patrick J. Darrow**

Secretary-Treasurer & Business Manager

**Gerard Colant**

President & Business Agent

**Bubba Graham**

Vice-President

**Wayne Trivelli**

Recording Secretary & Business Agent

**Keith Baker**

Trustee

**Eric Baumberger**

Trustee

**John Fahrer**

Trustee

## **Local 348 Membership Services**

**Office Hours 8:30AM - 4:30PM**

Monday through Friday

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**Local 348 Health & Welfare Fund**

(330) 434-3429

**Prepaid Legal Services**

Blakemore, Meeker & Bowler Co. L.P.A.

(330) 253-3337

**Ohio Teamsters Credit Union**

(800) 909-6828

**Central States Pension Fund**

(800) 323-5000

website: [www.teamsters348.org](http://www.teamsters348.org)

Teamsters Local 348 is a member of the Tri-County Building & Construction Trades Council and is an affiliate of Teamsters Joint Council 41, Ohio Conference of Teamsters, Ohio DRIVE, Ohio Teamsters Sports Committee and the International Brotherhood of Teamsters.

## **15 COLLEGE SCHOLARSHIPS AWARDED**

Fifteen college scholarships were awarded at this year's October Membership Meeting. The \$1,000.00 scholarships are awarded for the benefit of our members and their family members. These scholarships continue a long standing commitment to education by this Local in order to increase the opportunities available to working families. Teamsters Local #348 is proud to offer this benefit to advance the future of our members and their families.

The Teamsters Local #348 College Scholarship Program is unique. All members can apply for themselves or for a family member. We believe everyone can use a hand up. Scholarships are awarded through a random drawing in order to offer an opportunity for advancement for all our members and their families.

## **Congratulations to this year's winners:**

Alyssa Weigand

Dominik Pizzino

Leah Biggerstaff

Paige Schertzinger

Chase Schertzinger

Travis Caskey

Erica Yovanovich

Terrell Booker

Devette Lopp

Alec Mastroine

Heather Westfall

Jared Strubel

Tyler Bowers

Sydney Kuhn

Mark Weigand

Mario Pizzino

Troy Biggerstaff

Chuck Schertzinger

Chuck Schertzinger

Brian Caskey

Lou Yovanovich

Terrell Booker

Devette Lopp

Shawn Mastroine

Mark Westfall

Timothy Strubel

Brian Bowers

Hugh Kuhn

Reiter Dairy

UPS

METRO RTA

UPS

UPS

Reiter Dairy

Reiter Dairy

UPS

Rockynol

UPS

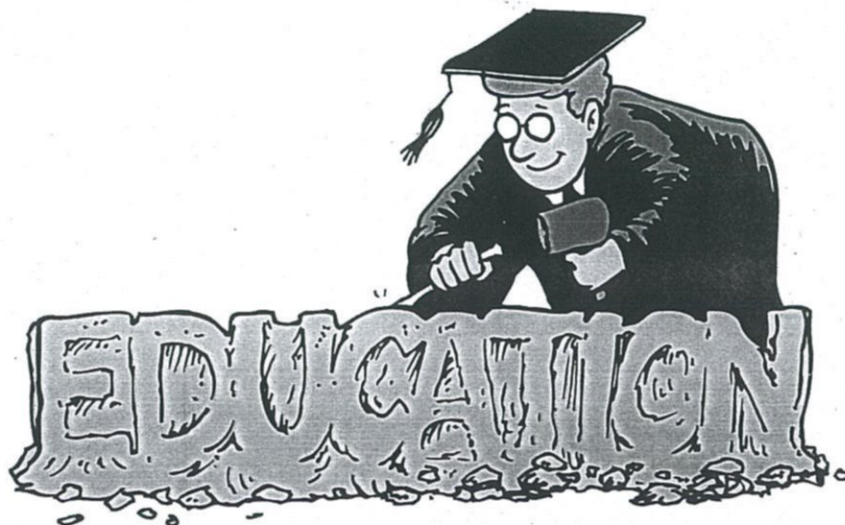
UPS

Reiter Dairy

UPS

Bluelinx

Sponsored by Teamsters Local #348 CER Fund



**General Membership Meetings 2nd Tuesday of Month, 8:00PM, except June, July, and August.**



## **NOMINATION NOTICE**

### **LOCAL UNION 348**

Nomination of candidates for 1 delegate and 2 alternate delegates(s) to the June 2016 International Brotherhood of Teamsters Convention in Las Vegas, NV will be held on:

Date: January 5, 2016

Time: 8:00 p.m.

Location: Teamsters Local Union 348 Hall  
272 W. Market Street, Akron, Ohio 44303

The expenses of sending the delegate to the IBT Convention will be paid by the Local Union.

The expenses of sending 2 alternate delegates will be paid by the Local Union.

### **ELIGIBILITY TO NOMINATE**

To be eligible to nominate or second, a member must have paid dues through December/2015.

Dues and arrearages must be paid by 4:30 p.m. on 01/05/16 at Local 348 Hall.

### **ELIGIBILITY TO RUN**

To be eligible to run for Convention delegate or alternate delegate, a member must:

1. Be a member in continuous good standing of the Local Union, with one's dues paid to the Local Union for a period of twenty-four (24) consecutive months prior to the month of nomination with no interruptions in active membership due to suspensions, expulsions, withdrawals, transfers or failure to pay fines or assessments;
2. Be employed at the craft within the jurisdiction of the Local Union for a period of twenty-four (24) consecutive months prior to the month of nomination; and
3. Be otherwise eligible to serve if elected.

It is strongly recommended that each prospective nominee request advance verification of his/her eligibility to run for delegate or alternate delegate. In order to maximize the opportunity for the Election Supervisor to verify eligibility in advance of nomination, this request should be made in writing to the Election Supervisor as soon as possible, but in no event less than five (5) working days prior to the nomination meeting. The Election Supervisor will not be able to verify eligibility of any prospective nominee who requests verification less than five (5) working days prior to the nomination meeting.

Any Candidate for delegate and alternate delegate is permitted to run as a member of a slate which is defined as any grouping by mutual consent of two or more candidates. To qualify on the election ballot as a slate, a slate declaration form, which is available from the Secretary-Treasurer or the Election Supervisor at the address shown below, must be completed and submitted to the Secretary-Treasurer, with a copy to the Election Supervisor no later than three (3) days after the Local Union's final nominations meeting.

Any attempt by a person or entity to limit, interfere or retaliate against any IBT member for exercising the right to nominate, second or run as a delegate or alternate delegate, may result in disqualification of a candidate who benefits from the violation, imposition of criminal penalties under federal law and/or other consequences or remedy.

For additional information relating to the nomination or election process for IBT International Delegates or Alternates, please contact your Local Union Secretary-Treasurer, the Election Supervisor, or the Election Supervisor Regional Director.

*See page 4 for method of nomination and acceptance of nomination.*

### **THE ELECTION SUPERVISOR MAY BE CONTACTED AT:**

RICHARD W. MARK  
OFFICE OF THE ELECTION SUPERVISOR  
1050 17TH ST., N.W., SUITE 375  
WASHINGTON, D.C. 20036  
PHONE: (202) 429-8683  
TOLL FREE: 844-428-8683  
FACSIMILE: (202) 774-5526  
ElectionSupervisor@ibtvote.org

### **THE ELECTION SUPERVISOR REGIONAL DIRECTOR MAY BE CONTACTED AT:**

JOHN PEGULA  
1434 GREENDALE DRIVE  
PITTSBURGH, PA 15239  
PHONE: (412) 793-8642  
jpegula@ibtvote.org



### METHOD OF NOMINATION

Delegate candidates will be nominated and seconded separately from alternate delegate candidates. All nominations for delegate and alternate delegate shall be at large.

Any member may:

1. Be nominated and seconded orally from the floor by members in good standing other than the nominee; or
2. Be nominated and seconded in writing by members in good standing, other than the nominee, unable to attend the nominations meeting. A written nomination or second must:
  - Be submitted to the Local Union Secretary-Treasurer so as to be received no later than 5:00 p.m. of the day of the nominations meeting;
  - State whether it is a nomination or a second;
  - Identify the name of the person being nominated or seconded;
  - Identify if the nomination or second is for delegate or alternate delegate;
  - Be signed and have the member's last four (4) digits of their Social Security Number; and
  - Be treated by the presiding officer as if it had been made from the floor.

3. Nominate or second more than one candidate;
4. Be nominated or seconded by more than one member;
5. Decline to be nominated or seconded by a particular person or persons.

Any member who intends to nominate or second a candidate may also request that the Election Supervisor verify his/her eligibility. All such requests must be in writing and must be received by the Election Supervisor no less than five (5) days prior to the nomination meeting.

### ACCEPTANCE OF NOMINATION

The nominee may accept either:

1. In person at the meeting; or, if absent, in writing.
2. If acceptance is made in writing, the document must be presented to the presiding Local Union officer no later than the time the member is nominated. Any member present at the meeting may produce the written acceptance at the time the absent member is nominated. No member may accept nomination for both delegate and alternate delegate.

## HAPPY HOLIDAYS FROM TEAMSTERS LOCAL 348



### YES, YOU HAVE RIGHTS!

If you are called into a meeting with any management representative and have reason to believe that disciplinary action may result, read them your Weingarten rights...

### MY WEINGARTEN RIGHTS

If this discussion could in any way lead to my being disciplined or terminated, or affect my personal working conditions, I respectfully request that my union representative or steward be present at this meeting. With out representation, I choose not to answer any questions.

### PROTECTING YOUR RIGHTS IN THE WORK PLACE

In 1975, the U.S. Supreme Court ruled in the Weingarten decision that an employee is entitled to have union representation present during any interview, which may result in his or her discipline. It is up to you to insist on union representation. If you fail to do so, you may waive your rights.

### MY WEINGARTEN RIGHTS

If this discussion could in any way lead to my being disciplined or terminated, or affect my personal working conditions, I respectfully request that my union representative or steward be present at this meeting. With out representation, I choose not to answer any questions.

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## **WHAT TO DO IN CASE OF PERSONAL INJURY**

During the period of the prepaid legal plan for Teamster's Local #348 a number of members have used the services of BLAKEMORE, MEEKER & BOWLER CO., L.P.A. to represent them for personal injury cases which have occurred. These cases have included auto accidents, dog bites, product liability, and medical malpractice.

It is extremely important that you and/or your family take the proper initial steps if you are injured as a result of the negligence of a third party:

1. In the case of an auto accident, be sure to call the police and have an accident report completed.
2. Take the proper steps for your initial medical care which may include visiting an emergency room at one of the local hospitals and/or seeing a doctor as soon as possible after your incident.
3. Contact BLAKEMORE, MEEKER & BOWLER CO., L.P.A. (330) 253-3337 to complete the initial legal relationship with our firm to represent you in this

matter. We will immediately advise you on steps that should be taken to preserve evidence, to contact the appropriate insurance companies and to protect your rights.

4. Meet with the assigned attorney in our office as soon as possible after the initial contact. We will review the status of the accident, the course of your medical care and advise you on everything that should be done to ensure that your recovery would be adequate.

BLAKEMORE, MEEKER & BOWLER CO., L.P.A. takes great pride in our relationship with Teamsters Local #348. Your members and their families are the kinds of clients we have represented since the founding of our firm 33 years ago.

We hope to have the opportunity to represent you for all of your families' needs in the future.

Team Legal Prepaid Legal Services  
Blakemore, Meeker & Bowler Co., L.P.A.  
(330) 253-3337

## **Clips and Tips**

**Need legal help?** The law firm of Blakemore, Meeker & Bowler Co., L.P.A. provides members in good standing and their immediate families with an initial consultation on any legal subject, or document review of ten pages or less, free of charge. The law firm also provides a simple will, free of charge. For more information call (330) 253-3337.

**Get Connected** The IBT is proud to announce the new and improved [www.teamsters.org](http://www.teamsters.org) website. The new website has been designed with you the member in mind. Access important information and IBT resources at the click of a mouse. Log on today. [www.teamsters.org](http://www.teamsters.org).

### **What have unions done for the working people?**

Just a few little things; the eight hour work day, the weekend, fair wages, the minimum wage, workers' compensation, unemployment compensation, health insurance, family and medical leave, a ban on child labor, civil rights, job safety, training, apprenticeships, scholarships, and more!

### **Know someone who needs to join our union?**

Organizing the unorganized remains a top priority for Local #348. To do this effectively, however, we need your assistance. You can help by telling your relatives and friends about the benefits and services offered by Local #348. Call (330) 434-3424 with your organizing leads.





Local 348 IBT  
272 W. Market St.  
Akron, OH 44303



CHARLES MARTIN  
209 E. FRIEND ST.  
COLUMBIANA, OH 44408

44408\$1342 CQ04



## THE JAMES R. HOFFA MEMORIAL SCHOLARSHIP 2016-2017 Academic Year Scholarships

The James R. Hoffa Memorial Scholarship Fund seeks to plant the seeds that will encourage our children to grow their academic knowledge and ultimately contribute to a better future for all our members and their families. The Fund awards scholarships annually to outstanding high school seniors. Applicants compete in one of the five geographic regions where the Teamster parents/grandparents local union is located. Applications are now being taken for the 2016-2017 academic year.

Eligibility requirements and application procedures are the same for all awards. Due to the highly competitive nature of the program and large number of applicants, the Scholarship Fund has established some guidelines to be used by students when deciding whether or not to apply for this program. Applicants should rank in the top fifteen percent of their high school class, have or expect to have excellent SAT or ACT scores, and demonstrate financial need. Applicants must graduate from high school during the academic year. Applicants must be a son, daughter or grandchild of a Teamster member.

### THE DEADLINE FOR APPLICATIONS IS MARCH 31, 2016.

Completed applications must be sent to the Local Union two weeks prior to the application deadline.

The Local Union Secretary-Treasurer will forward the form to the Scholarship Fund.

Applications are available from Teamsters Local #348 and from the Scholarship Fund.

In addition applications can be downloaded from the Teamsters website [www.teamster.org](http://www.teamster.org).

For information contact Teamsters Local #348 at (330) 434-3424.

James R. Hoffa became a Teamster member in 1934 and served as General President for fourteen years. In recognition of his tireless service to the Union and its members James R. Hoffa was honored as General President Emeritus for life. At the November 1999 General Executive Board Meeting, General Secretary-Treasurer C. Thomas Keegel, presented a resolution to establish the new Scholarship Fund. "This scholarship is truly a fitting memorial to my father", said Teamster General President James P. Hoffa. "This Scholarship furthers the Teamster tradition of helping working families."